

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

KINGSLEY OSAGIE,)	
)	Civil Action No. 3: 15-cv-0294
Petitioner,)	
)	United States District Judge
v.)	Kim R. Gibson
)	
UNITED STATES OF AMERICA,)	United States Magistrate Judge
)	Cynthia Reed Eddy
Respondent.)	

MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

I. RECOMMENDATION

It is respectfully recommended that the “Motion of Removal of Non-Violent Offender Prior to Completion of Sentence of Imprisonment in Pursuant to 8 U.S.C. 1231(a)(4)(b)” which will be construed as a Petition for Writ of Habeas Corpus by a federal prisoner (the “Petition”) filed pursuant to 28 U.S.C. § 2241, be summarily dismissed.

II. REPORT

Petitioner, Kingsley Osagie (“Petitioner” or “Osagie”), is a federal inmate currently incarcerated at Moshannon Valley Correctional Center in Philipsburg, Pennsylvania. Petitioner alleges that he is a non-violent offender presently serving a federal criminal sentence. By means of the Petition, he seeks to have this Court order his immediate deportation, notwithstanding the fact that he has not yet fully served his federal sentence. ECF No. 1.

Because Petitioner has no federal constitutional or statutory right to be immediately deported before the expiration of his criminal sentence, the Petition should be dismissed prior to being served.

A. Pre-Service Dismissal of Section 2241 Petitions

Section 2243 of Title 28 of the United States Code provides for summary dismissals before service of writs of habeas corpus filed pursuant to 28 U.S.C. § 2241. Section 2243 provides in relevant part that a “court, justice or judge entertaining an application for a writ of habeas corpus [i.e., a Section 2241 petition] shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” This Court concludes that it plainly appears from the Petition that Osagie is not entitled to any federal habeas relief.

B. Discussion

The present Petition can be disposed of easily. Petitioner relies on 8 U.S.C. § 1231(a)(4)(B). This provision gives the Attorney General authority to remove an alien before the alien has completed a sentence of imprisonment if the Attorney General determines that “the alien is confined to a final conviction for a nonviolent offense” and “the removal of the alien is appropriate and in the best interest of the United States.” 8 U.S.C. § 1231(a)(4)(B)(i). However, the statute creates no private cause of action and vests the Attorney General, not the district court, with the authority to curtail a prison sentence for the purpose of deportation. *United States v. Marin-Castaneda*, 134 F.3d 551, 556 (3d Cir. 1998). A district court cannot *sua sponte* issue a deportation order without a request from the United States Attorney. 8 U.S.C. § 1231(a)(4)(B). Further, an alien lacks standing to enforce 8 U.S.C. § 1231(a)(4)(B). *Marin-Castaneda*, 134 F.3d at 556 (citing *Thye v. United States*, 109 F.3d 127, 129 (2d Cir. 1997)). Thus, it is clear that the Court cannot grant any relief to Osagie, and for these reasons it is recommended that the Petition be summarily dismissed.

Conclusion

For all of the above reasons, the Court recommends that the Petition for Writ of Habeas Corpus be summarily dismissed.

In accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72(D)(2) of the Local Rules for Magistrates Judges, Petitioner is allowed fourteen (14) days after service of this Report and Recommendation, to file written Objections to this Report and Recommendation. Failure to file Objections will waive the right to appeal. *Brightwell v. Lehman*, 637 F.3d 187, 193 n.7 (3d Cir. 2011).

s/ Cynthia Reed Eddy
Cynthia Reed Eddy
United States Magistrate Judge

Dated: November 20, 2015

cc: KINGSLEY OSAGIE
64261-019
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